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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8529 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUMANSINGH PRATAPSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8529 of 1991

MS SR SHAH for MR YN OZA for Petitioner No. 1

MR UR BHATT AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR HS MUNSHAW for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The petitioner was serving as a primary teacher since 1986. For an incident of riots which took place on 19.10.1990 in village Kahanva complaint was lodged on the next day i.e. on 20.10.1990 against 27 persons for the offences u/Ss.147, 148, 435, 436, 452, 427, 153(a) and 295 of the IPC, Section 3 of the TADA Act and Section 135A of the Bombay Police Act (Annexure-B). The petitioner was arrested in the mid night hours on 20.10.1990 from his house and remained in jail for more than 48 hours. On this ground, after a period of more than one year of the incident he was placed under suspension on 1.11.1991 (Annexure-A) though he was released on bail by the learned Magistrate on 23.10.1990. The same is challenged in this petition.

Initially on 2.12.1991 notice was ordered to be issued to the respondents making it returnable on 9.12.1991 and on 11.12.1991 the matter was kept on 19.12.1991 on the request of Mr.Munshaw. While adjourning the matter further operation of the impugned order of suspension was stayed. Later on this petition was admitted on 6.3.1992 and ad-interim relief granted earlier was ordered to be continued. The same has continued till today.

Learned counsel Ms.Sonal R. Shah appearing for Mr.Y.N.Oza for the petitioner submitted that the impugned order of suspension passed in 1991 remained stayed for all this period of 13 years, therefore, there will be no justification in permitting to operate the same after lapse of so many years. In support of her submission she has placed reliance on the judgment of the learned Single Judge of this court dated 6.10.2000 delivered in Special Civil Application No.8511/99. Having regard to the peculiar facts and circumstances of the case, learned counsel Mr.Munshaw appearing for the respondent No.3 left it to the court for passing appropriate order in the matter.

Having heard learned counsel for the parties, we are of the considered opinion that on peculiar facts of this case, the impugned order of suspension cannot be allowed to stand as it remained stayed for all this period of 13 years.

At this stage, an apprehension is expressed by

the learned counsel for the respondents that this may become precedent. Care can be taken by observing that this order is passed on peculiar facts of this case.

Accordingly, this petition is allowed and the impugned order of suspension (Annexure-A) is quashed. Rule is made absolute. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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